

March 2019

Submission – Commonwealth Integrity Commission consultation

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This submission has been redacted, in accordance with the approach outlined on the Attorney-General's Department's website here: <https://www.ag.gov.au/Consultations/Pages/commonwealth-integrity-commission.aspx>.

Commonwealth Integrity Commission— proposed reforms – my comments

These arrangements have proven successful in that the Australian public sector is consistently ranked as a low corruption jurisdiction and it is generally accepted that there is no evidence of systemic or endemic integrity issues in the federal public sector.

Faulty logic here. If complaints are not heard or investigated then there are no statistics to support or refute a low corruption jurisdiction.

Throughout the proposal I see repeated references to “integrity” and teaching integrity

...training and inform policy development and reforms on integrity issues. Through these functions, it will strengthen the detection and investigation of corruption, as well as enhance agencies’ resilience to corruption, thereby improving the integrity and accountability of the public sector.

If integrity training is to consist of a computer program with made up scenarios like “You over-hear two colleagues discussing confidential information in a coffee shop...” and multichoice answers – one that is “Immediately inform your manager....” then you will get excellent test scores and not much else.

Integrity is a culture.

Integrity is subjective and is directly linked to individual and societal values and beliefs. These beliefs are influenced by those around us and by those in position to influence us.

So, if business is seen as evil then any action taken against that business must be morally right and ethical - even if it is necessary to break a few laws to do so.

Australian politicians and media have spent the last decade creating a culture where many Australians believe that business is the enemy and business owners are ‘fat cat’ tax evaders.

<https://www.smh.com.au/politics/federal/senate-tax-inquiry-google-apple-microsoft-policies-highlight-golden-days-of-tax-laxness-20150410-1mi9k9.html>

<https://www.abc.net.au/news/2016-03-22/ato-30pc-of-large-private-companies-pay-no-tax/7266454>

<https://www.smh.com.au/opinion/tax-evasion-by-super-rich-hurts-every-australian-20150101-12gbd5.html>

<https://www.afr.com/news/policy/tax/the-ato-reveals-the-tax-secrets-of-the-rich-list-20160322-gno066>

So, if it's necessary to break a couple of small laws and overlook a few procedures to help bring a business down a bit – how can breaking those laws be unethical? Even stealing from business is justified because “they can afford it” and “We need it more.”

It seems an increasing number of people don't know how their system of government or laws work, why it works that way (present and historical) or appreciate the value and need for rule of law.

In the age of contract workers with no job security, social media, anonymous posting, revenge porn, ‘like farming’ and ‘re-tweeting’, “Fake news”, where Universities struggle to educate and cope with plagiarism and where opinion pieces from newspapers make up an increasing percentage of papers tabled in parliament... integrity is not what it was.

The proposal to bring the ACCC, APRA, ASIC and ATO within the law enforcement division’s jurisdiction reflects those agencies’ access to significant coercive powers and highly sensitive information and thus the fact that these bodies bear some significant resemblance to traditional law enforcement bodies already within ACLEI’s remit. Each of these proposed additional agencies to be overseen by the law enforcement division has the power to undertake investigations, compel the production of documents, enter premises and, for ACCC and ASIC, access stored telecommunications. These agencies also have access to sensitive and often highly valuable information, such as taxpayer or company information and

knowledge of the tax or relevant corporate regulatory systems, as well as their vulnerabilities. These agencies operate closely with the corporate sector and those they regulate, and may be targeted by people or corporate entities or organised crime groups seeking to evade regulatory systems and enforcement action.

Why isn't the largest and most coercive agency in Australia mentioned?

Centrelink (DHS) have the power to undertake investigations, both themselves and through other (subordinate) agencies – like the AFP for example.

The Australian Government launched Taskforce Integrity to identify and target geographic areas around Australia where data analysis, and other information, points to a higher risk of non-compliance and suspected welfare fraud.

The taskforce is led by Commander Kate Buggy, who with other AFP members has been seconded to the Department of Human Services to build on existing and well-established fraud detection and investigation capabilities.

The strengthened partnership between the AFP and Department of Human Services will enable the agencies to address the spectrum of dishonest/contrary conduct, ranging from individual non-compliance through to organised and complex fraud that are identified by taskforce investigations.

<https://www.afp.gov.au/what-we-do/crime-types/fraud/taskforce-integrity>

The AFP gave up independence and impartiality with this arrangement. They have allowed themselves to become a debt collection arm of Centrelink.

<https://thewest.com.au/news/australia/centrelink-faces-harassment-allegations-for-sending-out-letters-featuring-afp-logo-ng-b88559073z>

<https://www.smh.com.au/public-service/centrelink-accused-of-intimidating-clients-with-afp-letters-20170804-gxpait.html>

Centrelink (DHS) can compel the production of documents.

Centrelink can ask for all sorts of documents – probably more than any other agency. Financial, study, employment, medical, details of relatives, relationships, living arrangements and business documents. They can compel the production of documents very simply – people deal with Centrelink because they need income support – if they don't produce documents they don't get support.

Centrelink have financial leverage that no other agency has.

<https://www.humanservices.gov.au/individuals/enablers/supporting-documents-your-centrelink-claim/45521>

<https://www.theguardian.com/commentisfree/2018/nov/07/delilah-the-single-mum-and-the-seemingly-endless-supply-of-taxpayers-money>

<https://www.theguardian.com/australia-news/2019/jan/28/parentsnext-single-mothers-say-they-were-forced-to-allow-sensitive-data-to-be-collected>

And they have leverage with more Australians than anyone else:

<http://theconversation.com/factcheck-is-half-to-two-thirds-of-the-australian-population-receiving-a-government-benefit-41027>

They also have access to sensitive and often highly valuable information, such as taxpayer or company information.

Centrelink can datamatch with the ATO and can garnish tax returns and credits. Centrelink request business information as part of personal claims.

<https://www.humanservices.gov.au/organisations/about-us/publications-and-resources/centrelink-program-data-matching-activities>

As for access to personal information and the use of it: Centrelink has the power to release information “to such persons and for such purposes” as they deem fit.

<https://www.theguardian.com/australia-news/2017/feb/27/centrelink-recipients-data-released-by->

[department-to-counter-public-criticism](#)

<https://www.theguardian.com/australia-news/2018/may/29/government-cleared-of-privacy-breach-in-robodebt-row>

Centrelink can:

cut off all support to you and your family,

block your access to concessions

block your access to education.

block your access to legal services.

block your access to employment services

garnish your pay, and tax returns

pierce the corporate veil.

Centrelink, quite literally, has the power to make you and your family homeless.

They can even put a travel ban on you so you cannot move away.

...and they can do all this without even talking to a Judge.

Centrelink are most definitely a coercive agency:

If you appeal, you still don't get to talk to a Judge – you must first pass the AAT – an administrative body. A process that can take years. Then you still might not be able to access the judiciary unless you have the money to do so – which you probably don't... because that is why you went to Centrelink to begin with.

Centrelink have also completely overwhelmed legal services.

<https://www.theguardian.com/australia-news/2017/apr/01/legal-aid-services-join-up-to-deal-with-high-volume-of-centrelink-debt-cases>

Further consideration (through the consultation process on the proposed model) will be given to whether the public sector division of the CIC could be given jurisdiction over members of the federal judiciary (noting their staff are employed under the Public Service Act and so will come within CIC jurisdiction).

Australia operates on the separation of powers doctrine.

I agree that there should be a body with jurisdiction to investigate the federal judiciary, but it would be a mistake to allow one body jurisdiction over all three branches of government. It may seem efficient, but "efficient" government has been tried before – and it didn't end well.

Laws should not be made for good governments, they should be made for bad ones.

All three arms of government are equal under the constitution. If the legislature attempt to create a body which is above all three arms - the judiciary must challenge that. If that happens the authority and credibility of both branches will suffer.

The public will continue to be able to make complaints through existing mechanisms—for example by reporting a matter to a department or agency, or to another integrity agency like the Ombudsman or AFP. Those agencies will then determine whether the matter should be referred to the CIC in accordance with the referral arrangements indicated above.

I hope my case study shows that the existing mechanisms do not work. Allowing the very agencies a proposed CIC is supposed to have jurisdiction over to act as the gatekeepers to that agency only encourages further cover ups.

Proposed offences

Failure to report public sector corruption offence

It is also proposed that a new 'failure to report public sector corruption' offence be introduced. For the purposes of this offence, 'public sector corruption' will constitute any of the offences in the new public sector division of the Criminal Code (see above).

A person will be liable under the failure to report public sector corruption offence if:

- the person is a senior public service official*
- the person knows of information that would lead a reasonable person to believe that an employee or agent of the agency has engaged in conduct*
 - such conduct, if engaged in, would constitute one or more of the offences in the public sector division of the Criminal Code, and*
 - the person did not take reasonable steps to arrange for the conduct to be reported to law enforcement or another appropriate authority (such as the CIC).*

The maximum penalty for this offence will be 3 years' imprisonment. This offence will be subject to the proposed aggravated 'repeated public sector corruption' offence described above.

The scope of the offence could be reviewed in 3 years' time to consider whether it should be expanded to cover senior officers of entities and organisations which provide government services or undertake contracts for government.

Why only a "senior public service official"? Why not "anyone performing a task for the public service."

This means that any public service official who is not considered 'senior' or any contractor working for the public service isn't covered. As for "reasonable steps to arrange for the conduct to be reported to law enforcement or another appropriate authority"... so you don't actually have to report it... you just have to arrange to report it?

<https://www.theguardian.com/australia-news/2019/jan/29/australias-global-corruption-ranking-sparks-urgent-calls-for-federal-integrity-body>

"Corruption chips away at democracy to produce a vicious cycle, where corruption undermines democratic institutions and, in turn, weak institutions are less able to control corruption," Moreira said. "With many democratic institutions under threat across the globe – often by leaders with authoritarian or populist tendencies – we need to do more to strengthen checks and balances and protect citizens' rights."

- Patricia Moreira, Transparency International's managing director.

Thank you for your time reading this submission.

Brian Auckram.